

# EXHIBIT A

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 SECURITIES AND EXCHANGE  
4 COMMISSION,

Plaintiff,

5 v.

20 CV 10832 (AT)(SN)  
Remote Conference

6 RIPPLE LABS INC., et al.,

7 Defendants.

8 -----x

9 New York, N.Y.  
10 August 31, 2021  
12:16 p.m.

11 Before:

12 HON. SARAH NETBURN,

13 Magistrate Judge

14 APPEARANCES

15 SECURITIES AND EXCHANGE COMMISSION

16 BY: JORGE G. TENRERIRO

17 CLEARY GOTTlieb STEEN & HAMILTON LLP

Attorneys for Defendant Garlinghouse

18 BY: MATTHEW C. SOLOMON

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Attorneys for Defendant Ripple Labs, Inc.

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1 regarding the SEC's assertion primarily of the deliberative  
2 process privilege, and I have reviewed the SEC's response  
3 letter filed on August 17th and the reply letter by the  
4 defendants filed on August 23rd.

5 I know that there is also a motion pending in  
6 connection with the Slack messaging. I don't intend to address  
7 that today. And I believe another motion was recently filed by  
8 the defendants, which I don't believe is fully briefed, and so  
9 we will certainly not be addressing that either.

10 Why don't I begin. Mr. Solomon, will you be taking  
11 the lead on behalf of your team?

12 MR. SOLOMON: Yes, I will, your Honor.

13 THE COURT: Let me ask you a pointed question, and  
14 I'll ask the same question to Mr. Tenreiro as well: In your  
15 opinion – I want to focus first on the aiding and abetting  
16 charge against the individual defendants – is the standard for  
17 that charge an objective standard or a subjective standard?  
18 Meaning is the question whether or not your client was  
19 objectively reckless or is the question whether your client was  
20 subjectively reckless? And if you could point to the law that  
21 you think supports your position, I would appreciate it.

22 MR. SOLOMON: Of course, your Honor.

23 The standard is, for recklessness, one of objective,  
24 not subjective. And in our motion to dismiss, we cited a lot  
25 of law on that. I think Apuzzo is the formative Second Circuit

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1 case on that, and there are numerous other cases in the  
2 Southern District of New York that also apply that same  
3 objective standard. The Dodd-Frank Act, again, amended aiding  
4 and abetting, which originally required knowledge, and now it  
5 requires knowledge and recklessness. Another case that I would  
6 cite for that proposition that aiding and abetting -- reckless  
7 aiding and abetting is an objective standard is *Novak v.*  
8 *Kasaks*, and that's 216 F.3d 300 -- that's a Second Circuit case  
9 from 2000 -- and that's the case, again, that stands for the  
10 proposition that if the underlying law was unclear at the time  
11 even to the SEC, then the alleged violation could not have been  
12 "so obvious, that the defendant must have been aware of it."  
13 It's that "so obvious" point, your Honor, that we've been  
14 coming to the Court with, and we came to Judge Torres on the  
15 motion to dismiss, that is really one of the key linchpins for  
16 why we've been arguing since April, and your Honor has  
17 accepted, that the SEC's internal documents and the way the SEC  
18 was looking at the issue of XRP, Bitcoin and Ether, and  
19 whether, to the SEC, there was certainty, there was clarity,  
20 about whether or not those digital assets were securities  
21 because of the objective recklessness standard. That means it  
22 is relevant, highly relevant, and ultimately highly probative,  
23 that we get discovery into the SEC's thinking on that, because,  
24 as a key market participant, the SEC's views go into the  
25 objective analysis. And, again, I would commend your Honor to